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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OCT 04 1988

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

SUPERFUND BRANCH

IN THE MATTER OF:

PRIES ENTERPRISES, INC.  
A.K.A. HAWKEYE INDUSTRIES  
Independence, Iowa

Respondent

Proceedings under Section 3008  
of the Resource Conservation  
and Recovery Act of 1976,  
42 U.S.C. § 6928 (1984),  
as amended.

) Docket No. VII-88-H-0034  
)  
)  
) COMPLAINT, COMPLIANCE  
) ORDER AND NOTICE OF  
) OPPORTUNITY FOR HEARING  
)  
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A. PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6928(a) and (g) (1984), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (1980). The Complainant is the Regional Administrator of the United States Environmental Protection Agency (EPA), Region VII. The Respondent is Pries Enterprises, Inc., a.k.a. Hawkeye Aluminum, an Iowa Corporation whose registered agent is Merle J. McMahon, 701 17th Street, S.E., Independence, Iowa 50644.



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RCRA Records Center



As a result of an inspection conducted by a duly authorized representative of EPA on February 11, 1988, and other information available to EPA, Complainant has determined that the Respondent is in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and certain regulations promulgated under RCRA, including, inter alia, 40 C.F.R. §§ 262.12, 262.34(c), 264.16(d), 265.16(d), 264.35, 265.35, 264.37(a), 265.37(a), 264.51, 265.51, 264.174 and 265.174.

The Complaint below establishes the violations and proposes a civil penalty for the violations pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) (1984). Said penalty is based on the seriousness of the violations, the threat of harm to human health or the environment, and the efforts of the Respondent to comply with the applicable requirements. The dollar amount of the proposed penalty has been determined pursuant to the RCRA Civil Penalty Policy issued by EPA on May 8, 1984.

#### B. COMPLAINT

##### COUNT I

1. Respondent is an Iowa Corporation, authorized to do business in the State of Iowa, and is a person as defined in Section 1004 of RCRA, 42 U.S.C. § 6903.

2. Respondent owns and operates a manufacturing plant located at 701 17th Street, S.E., Independence, Iowa (hereinafter referred to as the "Facility").

3. Respondent is engaged in the business of manufacturing extruded aluminum products. Manufacturing operations include,

inter alia, metal forming, cleaning and painting of metal. As a result of such manufacturing operations, Respondent generates and manages hazardous waste.

4. Between approximately May and December, 1987, Respondent operated a process line and a wastewater treatment unit for the painting of aluminum extrusions at the Facility. As part of such painting processes, Respondent generated approximately 49 drums of hazardous waste sludge, listed as F019, as defined at 40 C.F.R. § 261.31.

5. Between approximately May 1987 and June 1988, Respondent accumulated hazardous waste, as referred to in paragraph 4, for more than 90 days, the maximum time that 40 C.F.R. § 262.34(a) allows a generator of hazardous waste to store hazardous waste without a permit.

6. Section 3005(a) of Subtitle C of RCRA, 42 U.S.C. § 6925(a), provides, in part, that:

. . . the Administrator of EPA shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage or disposal of hazardous waste, identified or listed under this Subtitle to have a permit issued pursuant to this Section. Such regulations shall take effect on the date provided in Section 3010 and upon and after such date, the treatment, storage or disposal of any hazardous waste is prohibited except in accordance with such a permit.

7. Regulations requiring persons owning or operating a facility for the treatment, storage or disposal of hazardous waste to have a permit issued pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), were promulgated on May 19, 1980, became effective November 19, 1980, and are codified at 40 C.F.R. Part 270.

8. After November 18, 1980, the treatment, storage or disposal of hazardous waste was prohibited unless an owner or operator of a hazardous waste treatment, storage or disposal facility obtained a permit for such a facility, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. Part 270.

9. 40 C.F.R. § 270.10(f) provides, in part, that no person shall construct a new hazardous waste management facility without having submitted Parts A and B of the permit application and receiving an effective RCRA permit.

10. On or about August 14, 1987, Respondent notified EPA, pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), that it was a new facility and that it treated, stored and disposed of hazardous waste identified by the hazardous waste numbers F019, K005, U134 and D002. Respondent was assigned EPA identification number IAD981716806 for the Facility.

11. On or about September 1, 1987, Respondent submitted Part A of the RCRA permit application. In the Part A application, Respondent indicated that it stored and treated in tanks and disposed in a landfill hazardous wastes identified as D002, K004, K006 and U134. Respondent did not include hazardous waste identified as F019 in the Part A application.

12. To date, Respondent has not filed Part B of the permit application nor received an effective RCRA permit for the storage of hazardous waste, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925.

13. Respondent has operated a facility for the storage of



hazardous waste without a permit, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

14. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations above, it is proposed that a civil penalty of \$16,875 be assessed for Respondent's storage of hazardous waste without a RCRA permit.

COUNT II

15. The allegations contained in paragraphs 1 through 11 are hereby incorporated and realleged.

16. 40 C.F.R. § 262.12 provides, in part, that a generator shall not store hazardous waste without having received an EPA identification number from the Administrator.

17. On or about May 28, 1987, Respondent began storing hazardous waste sludge, listed at F019, as defined at 40 C.F.R. § 261.31.

18. However, Respondent did not notify EPA of its hazardous waste activity and therefore did not receive its EPA identification number until about August 14, 1987.

19. Respondent stored hazardous waste without having received an EPA identification number from the Administrator, in violation of 40 C.F.R. § 262.12.

20. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations stated above, it is proposed that a civil penalty of \$4,000 be assessed against Respondent for storing hazardous waste without a hazardous waste identification number.

COUNT III

21. The allegations contained in paragraphs 1 through 11 are hereby incorporated and realleged.

22. 40 C.F.R. § 262.34(c) provides, in part, that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, without a permit, provided that he marks his containers with the words "Hazardous Waste" or with other words that identify the contents of the containers.

23. Respondent was accumulating waste xylene, identified as F003 at 40 C.F.R. § 261.31, in a 55-gallon barrel in the paint room near the painting area.

24. Such drum, as referred to in paragraph 23 above, was not marked with the words "Hazardous Waste" nor with any other words that would have identified the contents of the container, in violation of 40 C.F.R. § 262.34(c).

25. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and based upon the allegations stated above, it is proposed that a civil penalty of \$1,687 be assessed against Respondent for its accumulation of hazardous waste at a satellite accumulation point without marking the container with the words "Hazardous Waste" or any other words identifying the contents of the container.

COUNT IV

26. The allegations contained in paragraphs 1 through 11 are hereby incorporated and realleged.



27. 40 C.F.R. § 262.34(a) and (b) provide, in part, that a generator may accumulate hazardous waste for less than 90 days without a permit, provided he complies with Subpart C and D in 40 C.F.R. Part 265 and § 265.16. However, if a generator accumulates hazardous waste for more than 90 days he is an operator of a hazardous waste storage facility, and such facility is subject to all the requirements of 40 C.F.R. Part 264 and 265.

28. Respondent has accumulated hazardous waste for more than 90 days and is therefore subject to the requirements of 40 C.F.R. Part 264 and 265.

29. 40 C.F.R. §§ 264.16(d) and 265.16(d) provides, in part, that the owner or operator must, as part of personnel training, maintain the following documents and records at the facility:

- A. Job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
- B. Written job description for each position listed in above;
- C. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed above; and
- D. Records that document that training or job experience required been given to and completed by facility personnel.

30. Respondent did not maintain any records of personnel training, in violation of 40 C.F.R. §§ 264.16(d) and 265.16(d).

31. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations stated above, it is

proposed that a civil penalty of \$2,250 be assessed against Respondent for its failure to maintain any records of personnel training.

COUNT V

32. The allegations contained in paragraphs 1 through 28, are hereby incorporated and realleged.

33. 40 C.F.R. §§ 264.35 and 265.35 provide that the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control protection equipment, and decontamination equipment to any area of the facility operation in an emergency unless it can be demonstrated to the Regional Administrator that aisle space is not needed for any of those purposes.

34. Respondent did not maintain adequate aisle space, in violation of 40 C.F.R. §§ 264.35 and 265.35.

35. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations stated above, it is proposed that a civil penalty of \$1,000 be assessed against Respondent for its failure to maintain adequate aisle space.

COUNT VI

36. The allegations contained in paragraphs 1 through 28 are hereby incorporated and realleged.

37. 40 C.F.R. §§ 264.37(a) and 265.37(a) provide, in part, that the owner or operator must attempt to make arrangements with police and fire departments, emergency response teams and local hospitals, as appropriate, to familiarize them with the types of



waste handled at the facility and the potential need for their services.

38. Respondent did not attempt to make arrangements with local authorities and organizations as referred to in paragraph 37, to familiarize them with the types of waste handled at the facility and the potential need for their services, in violation of 40 C.F.R. §§ 264.37(a) and 265.37(a).

39. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and based upon the allegations stated above, it is proposed that a civil penalty of \$2,250 be assessed against Respondent for its failure to contact and make arrangements with local authorities and organizations.

#### COUNT VII

40. The allegations contained in paragraphs 1 through 28 are hereby incorporated and realleged.

41. 40 C.F.R. §§ 264.51 and 265.51 provide that each owner or operator must have a contingency plan for his facility.

42. Respondent did not have a contingency plan for the facility, in violation of 40 C.F.R. §§ 264.51 and 265.51.

43. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations stated above, it is proposed that a civil penalty of \$2,250 be assessed against Respondent for its failure to have a contingency plan for the facility.

#### COUNT VIII

44. The allegations contained in paragraphs 1 through 28

are hereby incorporated and realleged.

45. 40 C.F.R. §§ 264.174 and 265.174 provide that at least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

46. Respondent did not inspect container storage areas, in violation of 40 C.F.R. §§ 264.174 and 265.174.

47. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations stated above, it is proposed that a civil penalty of \$6,500 be assessed against Respondent for its failure to perform weekly inspections of its hazardous waste storage area.

C. COMPLIANCE ORDER

IT IS HEREBY ORDERED that within thirty (30) days of the effective date of this Order, Respondent shall pay a penalty of \$36,812. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251.

IT IS FURTHER ORDERED that Respondent shall take the following actions within the time periods specified:

1. Respondent shall:

(a) Immediately upon receipt of this Order, comply with the requirements set forth at 40 C.F.R. § 262.34.



(b) Immediately upon receipt of this Order, remove any and all containers of hazardous waste that have been in storage at the facility for more than ninety (90) days. Said containers shall be removed by using an appropriate transporter and taken to an appropriate treatment, storage, disposal or recycling facility in accordance with 40 C.F.R. Part 260 through Part 270. Copies of all completed manifests shall be submitted to EPA for all shipments of hazardous waste.

(c) Within forty-five (45) days of receipt of this Order, submit a closure plan for review and approval which meets the requirements of 40 C.F.R. Part 264, Subpart G. The closure plan shall address all drum storage area(s) where F019, as defined at 40 C.F.R. § 261.31, is stored.

(d) Upon EPA approval, fully implement the closure plan for the hazardous waste storage area(s) in accordance with the schedule contained therein. The approved closure plan, inclusive of any modifications made by EPA, shall be incorporated into and become part of this Compliance Order.

(e) Within sixty (60) days of completion of closure of the storage area(s), submit a certification of closure, in accordance with 40 C.F.R. § 264.115.

(f) Within forty-five (45) days of receipt of this Order, establish and thereafter maintain financial assurance for closure as required by 40 C.F.R. 264, Subpart H.

(g) Within five (5) days after financial assurance has been established, submit evidence that financial assurance for

closure as required by 40 C.F.R. 264, Subpart H has been obtained.

(h) Within forty-five (45) days of receipt of this Order, establish and maintain liability coverage for sudden accidental occurrences for the F019 drum storage area(s) as required by 40 C.F.R. § 264.147(a). Coverage must be maintained until Respondent is released from this requirement by the Director, Waste Management Division, in accordance with 40 C.F.R. § 264.147(e).

(i) Within five (5) days after liability coverage for sudden accidental occurrences has been established, submit evidence that such coverage has been obtained in accordance with 40 C.F.R. § 264.147(a).

(j) Within fifteen (15) days of receipt of this Order, submit a new Hazardous Waste Activity Notification Form to reflect the current Facility waste management practices.

(k) Within thirty (30) days of receipt of this Order, submit a copy of the contingency plan for the Facility. The plan must meet the requirements set forth at 40 C.F.R. § 265.52.

(l) Within thirty (30) days of receipt of this Order, submit a copy of the personnel training plan. The plan must meet the requirements set forth at 40 C.F.R. § 265.16.

(m) Immediately upon receipt of this Order, maintain adequate aisle space in the Facility's hazardous waste storage area in accordance with 40 C.F.R. § 265.35.



(n) Within thirty (30) days of receipt of this Order, submit copies of the letters sent to, and the return receipt requested slip received from, each police department, fire department, hospital and state and local emergency response teams indicating receipt of a copy of the contingency plan.

(o) Immediately upon receipt of this Order, document weekly inspections of the Facility's container storage area. The inspection must be made in accordance with 40 C.F.R. § 265.174.

(p) Immediately upon receipt of this Order, label all containers accumulating hazardous waste at the point of generation with the words "Hazardous Waste" or other words that identify the contents of the containers.

2. All documents and notices required to be submitted by this Order shall be sent to Lynn Slugantz, Environmental Engineer, Iowa Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

#### D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), the Compliance Order shall become final unless Respondent files an answer, in writing, and requests a public hearing in writing no later than thirty (30) days after service of the Complaint, Compliance Order and Notice of Opportunity for Hearing.

A written answer to the Complaint and Compliance Order and the request for hearing must satisfy the requirements of

40 C.F.R. § 22.15 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Ms. Robin P. Lancaster, at the same address.

Respondent's failure to file a written answer and request for a hearing within thirty (30) days of service of this Complaint, Compliance Order, and Notice of Opportunity for Hearing will constitute a binding admission of all allegations contained in the Complaint and a waiver of Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalty proposed herein shall become due and payable without further proceedings.

#### SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please write to Ms. Robin P. Lancaster, Office of Regional Counsel, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, or call her at (913) 236-2809.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during

which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order issued by the Regional Administrator, U.S. EPA, Region VII.

If Respondent has neither effected a settlement by informal conference nor requested a hearing within the thirty (30) day time period allowed by the Complaint, Compliance Order any Notice of Opportunity for Hearing, the penalties will be assessed without further proceedings and Respondent will be notified by EPA that the penalties have become due and payable.

9/29/88  
Date

Robin P. Lancaster  
Robin P. Lancaster  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

9-30-88  
Date

Morris Kay  
Morris Kay  
Regional Administrator  
U.S. Environmental Protection  
Region VII

Attachment



CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order and Notice of opportunity for Hearing were hand-delivered to the Regional Hearing Clerk, EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; and a true and correct copy together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by certified mail, return receipt requested to Mr. Merle McMahon, Registered Agent, on this 30<sup>th</sup> day of September, 1988.

Carol Miller  
Carol Miller

cc: Pete Hamlin  
Iowa Department of Natural Resources